HON'BLE SRI JUSTICE L. NARASIMHA REDDY

WRIT PETITION No.16780 of 2007

Date: 07.08.2007

Between :

Madasu Ramesh Naidu.

.....Petitioner

And

The A.P.State Housing Board and others.

.....Respondents.

HON'BLE SRI JUSTICE L. NARASIMHA REDDY

WRIT PETITION No.16780 of 2007

ORDER :

The petitioner was allotted a single bedroom flat at Vijayawada by the A.P. State Housing Board. Initially, the cost was fixed at Rs.62,500/-. Thereafter, it was enhanced to Rs.73,000/-. It is stated that by 2002, the petitioner paid a sum of Rs.1,04,000/- at various stages and despite the same, the respondents issued a demand notice-cum-provisional order, dated 25.01.2002, requiring the petitioner to pay a sum of Rs.21,461/-. Aggrieved thereby, the petitioner filed O.S.No.588 of 2002 in the Court of II Additional Junior Civil Judge, Vijayawada against the respondents. The suit was decreed on 23.09.2004, holding that the demand notice-cum-provisional order, dated 25.01.2002 is unenforceable in law. It was left open to the respondents to make a claim against the petitioner, duly specifying the quantum of installments, the rate of penal interest thereon and the

basis for the demand, provided that the demand is not barred by limitation.

The third respondent issued a demand notice, dated 13.06.2007 requiring the petitioner to pay a sum of Rs.83,808/- within 30 days from the date of receipt of a copy thereof. It was also pointed out that the failure to pay the amount would result in eviction of the petitioner. The same is challenged in this writ petition.

Learned counsel for the petitioner submits that an identical notice issued for a lesser amount was set aside in O.S.No.588 of 2002 and having suffered a judgment, the respondents have issued the impugned notice, contrary to the directions contained in the judgment.

Learned Standing Counsel for the respondents, on the other hand, submits that the petitioner did not approach them for furnishing of particulars and they would be provided, in case the petitioner wants them.

The respondents demanded a sum of Rs.21,461/- as the balance of consideration for the flat, through their notice, dated 25.01.2002. The petitioner filed O.S.No.588 of 2002 in the Court of II Additional Junior Civil Judge, Vijayawada. After hearing both the parties and on a

consideration of the oral and documentary evidence before it, the trial Court decreed the suit as under:

> "*In view of my answer in issue no.1 the plaintiff is entitled for the relief prayed and the suit is decreed, by declaring the notice-cum-provisional order dt. 25.01.2002 as illegal, invalid and un-enforceable in the eye of law. Any how, in view of my observation in issue no.1, it is open to the first defendant to make his claim against the plaintiff by specifying the quantum of instalment payable and the rate of penal interest payable and the basis for demanding the said penal interest by issuing a fresh demand notice to the plaintiff provided that the claim of the defendants is not barred by limitation.*"

The judgment of the trial Court has become final. In the light of this, the only course open to the respondents was to raise a claim, indicating the quantum of installments and the penal interest thereon, duly ensuring that none of the components are barred by limitation. Contrary to this, the impugned demand notice is issued requiring the petitioner to pay a sum of Rs.83,808/-. None of the components pointed out in the judgment in O.S.No.588 of 2002 is contained in this notice. Even otherwise, the respondents cannot require the petitioner to pay such a huge amount, without undertaking the determination, after giving him an opportunity.

For the foregoing reasons, the writ petition is allowed and the impugned notice is set aside. It is left

open to the respondents to raise their demand, strictly in accordance with the conditions mentioned in the judgment in O.S.No.588 of 2002. There shall be no order as to costs.

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07.08.2007

JSU